

CONFIDENTIAL --
Attorney Client Communication
MEMORANDUM OF LAW

DATE: December 6, 1995

TO: Milon Mills, Jr., Water Utilities Director

FROM: City Attorney

SUBJECT: Public Records Request for Surveillance Reports

FACTUAL CONTEXT OF REQUEST

By way of background, Robert Otilie, a Civil Service Commissioner, made a demand on you in August of 1995 for videotapes and "all documents relating to a Dr. James Boiley [sic]." Dr. Boily had complained to Councilmember Mathis about improper work behavior of Water Utilities Department crews near his home on January 31 and February 1, 1994.

Independent of this complaint, the City Manager through Risk Management initiated surveillance of selected utility workers in March and April of 1994 which involved videotaping selected individuals and separate investigative reports. In September of 1995, you consulted this office on whether the tapes should be produced and have subsequently asked whether the investigative reports should be released.

Through letters of September 6 and September 8, 1995, Mr. Otilie was supplied six (6) copied videotapes of utility workers with the name of the worker deleted from the outside of each tape. When supplied these tapes, Mr. Otilie was expressly cautioned about the privacy issues of the individuals and that the release was being made to him in his capacity as a Civil Service Commissioner.

Since that release, two other events have occurred. We understand that despite our caution, Mr. Otilie has released the tapes to a public news organization. In addition, the Personnel Director has been directed to investigate and report to the Civil Service Commission on events arising from the videotapes. Further we understand this investigation is in progress and the Personnel Director is utilizing both the tapes and the surveillance reports.

LEGAL ANALYSIS

We need not reevaluate the delicate balance between an

individual's privacy rights and the public's extensive access to records of the government. That has been ably done in our January 12, 1995 Opinion No. 95-1 which focused on the highly similar issue of whether the name of an employee currently under investigation should be released to the public. That question was answered in the negative given the same balance we face here:

We must, therefore, consider the conflict-ing interests affected as a result of the Commissioner's request. It is clear from the Braun case that names of public employees are generally to be treated as public records except in very narrow instances. This case presents a narrow exemption because of the particular facts. As a result of the airing by Channel 10 of the film of City employees, department heads initiated fact-finding investigations into the action of the employees. These investigations may lead to discipline. Public employees are entitled by law to receive "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." *Skelly v. State Personnel Bd.*, 15 Cal. 3d 194, 215 (1975).

The results of the investigation then become a part of the personnel file and are exempt from disclosure under Government Code section 6254(c). Only if the disciplined employee pursues an appeal before the Commission do the records become public. There is clearly a strong public policy against disclosing the names of employees prior to concluding an investigation into alleged acts of impropriety. ^{fcitationso} Opinion No. 95-1 at page 5.

The present case confirms these concerns. The Personnel Director has an active investigation ongoing, is preparing a report which in part will deal with the City employees named in the investigative reports and could involve recommendations of discipline. The balance against name disclosure is even more compelling here. *Braun v. City of Taft*, 154 Cal. App. 3d at 346 cautions us to conduct an individual weighing process in each particular instance. Here the past dissemination to

a public news agency is clearly a factor to be considered that confirms our concern in the privacy balance.

CONCLUSION

Consistent with our advice to the Personnel Director and mindful of the requirement to balance personal privacy against full disclosure, we advise that you may release the surveillance reports but with the name of each City employee redacted from same. A sample letter to assist you is attached.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:920.11(x043.2)

Attachment

ML-95-87